

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATIONAL INDOOR FOOTBALL	:	
LEAGUE L.L.C.,	:	CIVIL DIVISION
Plaintiff	:	NO. CA 2 - 548
	:	
v.	:	TYPE OF PLEADING:
	:	
R.P.C. EMPLOYER SERVICES, INC.,	:	Motion to Strike Defendants' Exhibit
and DAN J. D'ALIO,	:	
	:	
Defendants.	:	JURY TRIAL DEMANDED
	:	
	:	FILED ON BEHALF OF:
	:	
	:	Plaintiff
	:	
	:	COUNSEL FOR PLAINTIFF:
	:	
	:	TIMOTHY C. LEVENTRY, LL.M
	:	LEVENTRY, HASCHAK &
	:	RODKEY, LLC
	:	1397 EISENHOWER BOULEVARD
	:	RICHLAND SQUARE III, SUITE 202
	:	JOHNSTOWN, PA 15904
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	:	
Defendants.	:	

PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' EXHIBIT

AND NOW, comes the Plaintiff, NATIONAL INDOOR FOOTBALL LEAGUE, L.L.C. (hereinafter "NIFL"), by and through its attorneys, Leventry, Haschak & Rodkey, LLC, and files the foregoing Motion to Strike Defendants' Exhibit:

1. On March 22, 2006, the Defendants filed its First Supplemental Exhibit List adding to its Exhibit List "Exhibit N" entitled "CD ROM of Ohio Bureau of Workers' Compensation out of state claims from 1998-2004."
2. Exhibit N was not contained on the Defendants' March 13, 2006 Exhibit List.
3. The Defendants did not provide to the Plaintiffs a copy of Exhibit N during discovery or when the Defendants filed their First Supplemental Exhibit list. The Plaintiffs received Exhibit N very late in the case on March 24, 2006.
4. At no time before March 22, 2006 did the Defendants indicate they intended to use Exhibit N at trial.

5. As far as the Plaintiff can determine from the spreadsheet, Exhibit N is a spreadsheet of 17,555 claims. The spreadsheet contains the following columns: Claim Number, Date of Injury, Total Indemnity Paid Amount, Total Medical Paid Amount, IW Current State of Residence, Policy Number, Primary Name, Primary DBA Name, Street Address Line 1, City Name, State Code, Zip Code, Zip Plus Four. A copy of the first five pages of Exhibit N is attached hereto, made a part hereof and labeled **Exhibit A**.

6. The spreadsheet does not explain the meaning of its contents.
7. The Defendants did not provide Plaintiffs with a detailed explanation of Exhibit N.
8. This spreadsheet's application, meaning, and content is not discernable to the Plaintiffs. The Plaintiffs have no knowledge of the legitimacy or basis of Exhibit N.
9. The Plaintiffs have never had the opportunity to determine the spreadsheet's application, meaning and contents during discovery.
10. The Defendants did not give the Plaintiff sufficient time prepare for Exhibit N's introduction at trial, and the Defendants did not provide the Plaintiffs with an explanation of Exhibit N's contents or an opportunity to cross-examine the maker or a person with knowledge of Exhibit N.
11. Under these circumstances, the Plaintiffs cannot determine to what Exhibit N refers and how Exhibit N will be used at trial.
12. There is no certification offered for Exhibit N as required by Federal Rules of Evidence 803(6) and 902(11).
13. Without proper foundation or background, Exhibit N is misleading to the jury and prejudicial to the Plaintiffs.

14. As a result of the foregoing, the Plaintiffs will suffer substantial prejudice if Exhibit N is introduced at trial.

WHEREFORE, Plaintiff, National Indoor Football League, respectfully requests this Court Strike Exhibit N from the Defendants' First Supplement Exhibit List.

Respectfully submitted,

s/ Timothy C. Leventry
Timothy C. Leventry, LL.M
Attorney at Law

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CERTIFICATE OF SERVICE

I, Timothy C. Leventry, do hereby certify that a true and correct copy of the foregoing Motion to Strike Defendants' Exhibit was served on the parties listed below by regular mail, email and/or fax:

Michael J. Seymour, Esq.
Feczko and Seymour
520 Grant Building
310 Grant Street
Pittsburgh, PA 15219

Bernard C. Caputo, Esq.
Fort Pitt Commons Building, Suite 260
445 Fort Pitt Boulevard
Pittsburgh, Pennsylvania 15219

**LEVENTRY, HASCHAK,
& RODKEY, LLC**

Dated: 3-25-06

By: s/ Timothy C. Leventry
Timothy C. Leventry, Esquire